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B

Information

CRIMINAL COURT OF THE CITY OF NEW YORK

COUNTY OF NEW YORK

Part I

State of New York)
County of New York) ss.:

Ptl. James Copeland of No. 8 pct., County of Kings, City of New York, being duly sworn, deposes and says that on June 6, 1966, at about 7 p.m., at Lafayette Ave. & St. James Place, in the County of Kings, State of New York, the defendant, Sidney Street did commit the crime of Malicious Mischief in that the defendant did wilfully and unlawfully defile, cast contempt upon and burn an American Flag, in violation of 1425-16-D of the Penal Law, under the following circumstances:

On the aforesaid date, place and time, the defendant did wilfully and unlawfully set fire to an American Flag and shout, "If they did that to Meredith, We don't need an American Flag."

Sworn to before me
June 6, 1966

James F. Copeland
J F C

Judge, Criminal Court of the
City of New York

Adjourned to 6/14 Bail $ par

at Part 11B, County of Kings

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date Judge.

Adjourned to 6/21/66 Bail $ 500

for Trial

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

JUN 14 1966

Date EDWARD O. CABOT Judge.

Adjourned to Bail $

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date Judge

Retd 4 2 PM

JUN 6 CRIMINAL AID ASSIGN

JUN 6 1966

Judge

EDWARD ROSSBACH

SENTENCE

KESTON

AUG 9 1966

Date BERNARD J. O'CONNELL

Night Part Docket

Docket 5[illegible]

CRIMINAL COURT OF THE CITY OF NEW YORK

Part 11, County of

THE PEOPLE OF THE STATE OF NEW YORK vs.

1. Sidney Street 50 M
309 Lafayette [illegible] Bk

2.

3.

Defendant arraigned June 6, 196

Hon. Rossbach

Ptl Copeland 88 Officer and

The defendant on being brought befo informed of the within charge of violation

Malicious Mischief

of his right to communicate with relative by letter or telephone free of charge, of the aid of counsel at every stage of the and that if he desires counsel and is finan to obtain counsel, counsel shall be assi right to an adjournment to procure co right to a trial in a part of the Court hel of three judges, and if such trial is ordered to an examination of the charge.

Defendant pleads

Date

Tried and found

Date

/14 Bail $ pur

County of Kings

ant was advised pursuant to
nal Law.

Judge.

Bail $ 500

ant was advised pursuant to
al Law.

EDWARD D. CAL Judge.

Bail $

nt was advised pursuant to
al Law.

Judge.

AID ASSIGN

Judge

OSSBACH

TENCE

BOS

RNARD J. O'CONNELL

Night Part Docket

Docket 5995

CRIMINAL COURT
OF THE CITY OF NEW YORK

Part 11 County of

THE PEOPLE OF THE STATE OF NEW YORK

vs.

1. Sidney Street 50 M
309 Lafayette St. Bklyn
Address

2.
Address

3.
Address

Defendant arraigned June 6, 1966 19

Hon. Rossbach
Judge.

Ptl Copeland
88
Officer and Shield No.

Assignment.

The defendant on being brought before me was informed of the within charge of violation of

Malicious Mischief

of his right to communicate with relatives or friends by letter or telephone free of charge, of his right to the aid of counsel at every stage of the proceedings, and that if he desires counsel and is financially unable to obtain counsel, counsel shall be assigned, of his right to an adjournment to procure counsel, of his right to a trial in a part of the Court held by a panel of three judges, and if such trial is ordered, of his right to an examination of the charge.

Judge.

Defendant pleads GUILTY

Date 19

Judge.

Tried and found GUILTY

Date 19

Judge.

Complaint prepared by

Witnesses—name and address

Ptl James Copeland

7/26/66

8/9/66

Ft Sent

FINE PAID
FRANK MANDATO
COURT REPORTER
JUL 26 19

Date Amount $

Collected by

Fines Book Entry by

Docket Book Entry by

CASH BAIL POSTED. Dir. of Fin. Cert. #

ORDER THAT THE WITHIN CASH BAIL BE REFUNDED

Date Judge.

Refund Number Court Clerk

C

Endorsements on Information

A trial before a panel of three judges was ordered on demand by the defendant ☐ demand by the District Atty. ☐ motion of the Court ☐
(one box must be checked)

Date Judge.

Examination waived 196

Examination begun 196

Examination closed 196

ORDER OF DISMISSAL

There being no sufficient cause to believe the within named defendant

guilty of the offense within mentioned, I order said defendant to be discharged.

Date Judge.

ORDER TO ANSWER

It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named defendant

guilty thereof, I order that said defendant be held to answer in Part County of

on 196 and be admitted to bail in the sum of $

and be committed to the Commissioner of Correction of the City of New York until the said defendant shall give such bail.

Date Judge.

APPENDIX

Order of New York Court of Appeals

COURT OF APPEALS

STATE OF NEW YORK, *ss.*:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 7th day of July in the year of our Lord one thousand nine hundred and sixty-seven, before the Judges of said Court.

WITNESS,

The HON. STANLEY H. FULD,
Chief Judge, Presiding.

RAYMOND J. CANNON,
Clerk.

REMITTITUR July 7, 1967.
App. T. 2. No. 145. 67

THE PEOPLE &C.,
Respondent,

—VS.—

SIDNEY STREET,
Appellant.

BE IT REMEMBERED, That on the 25th day of March in the year of our Lord one thousand nine hundred and sixty-seven, Sidney Street, the appellant in this cause, came here unto the Court of Appeals, by Blumenthal, Somers & Goldstick, his attorneys, and filed in the said Court a

Order of New York Court of Appeals

Notice of Appeal and return thereto from the judgment of the Appellate Term of the Supreme Court, Second Judicial Department. And The People &c., the respondent in said cause, afterwards appeared in said Court of Appeals by Aaron E. Koota, District Attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. David T. Goldstick, of counsel for the appellant, and by Mr. Harry Brodb .r, of counsel for the respondent, brief filed by amicus curiae, and after due deliberation had thereon, did order and adjudge that the judgment herein be and the same hereby is affirmed.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Criminal Court of the City of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said judgment be affirmed, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Criminal Court of the City of New York, before the Judges thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Criminal Court, before the Judges thereof, &c.

RAYMOND J. CANNON
Clerk of the Court of Appeals
of the State of New York.

Court of Appeals, Clerk's Office,
Albany, July 7, 1967.

Decision of New York Court of Appeals

20 N. Y. 2d 231

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

—v.—

SIDNEY STREET,

Appellant.

Court of Appeals of New York

July 7, 1967

Defendant was convicted in the Criminal Court of the City of New York, Kings County, Ludwig C. Glowa, J., at time of trial, Bernard J. O'Connell, J., at time of sentence, of public desecration of the American flag. The defendant appealed. The Appellate Term of the Supreme Court in the Second Judicial Department affirmed. Appeal was allowed by permission of an associate judge of the Court of Appeals. The Court of Appeals, Fuld, C. J., held that the defendant's public burning of American flag as a protest against the shooting by a sniper of a civil rights leader while participating in a civil rights march in Mississippi was an act of incitement which was as fraught with danger to public peace as if he had stood on the street corner shouting epithets at passing pedestrians, and the state could legitimately curb such activities in interest of preventing violence and maintaining public order, nothwith-

standing that no violence actually did occur as result of flag burning.

Affirmed.

David T. Goldstick and John Somers, New York City, for appellant.

Aaron E. Koota, Dist. Atty. (Harry Brodbar, Brooklyn, of counsel), for respondent.

Peter M. Brown and Terence F. Gilheany, New York City, for United States Flag Foundation, Inc., amicus curiae.

FULD, Chief Judge.

We are called upon to decide whether the deliberate act of burning an American flag in public as a "protest" may be punished as a crime.

On June 6, 1966, after hearing on the radio that James Meredith, the civil rights leader, had been shot by a sniper in Mississippi while participating in a civil rights "march", the defendant—a decorated World War II veteran—decided to express his indignation and publicly to protest the tragic happening by burning an American flag. Owning two—one with 50 stars, the other with 48—he selected the latter and burned it on a street corner, telling the small crowd which collected that "[i]f they let that happen to Meredith we don't need an American flag." The defendant was arrested, tried and convicted for violating the provision of the Penal Law, Consol. Laws, c. 40 (§1425, subd. 16, par. d) which makes it a misdemeanor to "publicly mutilate" the United States flag.[1] He was acquitted of a sec-

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[1] Although paragraph d of subdivision 16 does not mention the word "flag", no one could possibly be misled as to the object of

ond charge of disorderly conduct and given a suspended sentence.

There is no doubt that "nonverbal expression" may be "a form of speech" within the meaning and protection of the First and Fourteenth Amendments. (People v. Stover, 12 N. Y. 2d 462, 469, 240 N. Y. S. 2d 734, 739, 191 N. E. 2d 272, 276, app. dsmd. 375 U. S. 42, 84 S. Ct. 147, 11 L. Ed. 2d 107; see Brown v. State of Louisiana, 383 U. S. 131, 142, 86 S. Ct. 719, 15 L. Ed. 2d 637 [sit-in]; Carlson v. People of State of California, 310 U. S. 106, 112, 60 S. Ct. 747, 84 L. Ed. 1104 [picketing]; Stromberg v. California, 283 U. S. 359, 51 S. Ct. 532, 75 L. Ed. 1117 [display of red flag]; cf. West Virginia State Board of Education v. Barnette, 319 U. S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 [flag salute].) However, this does not mean that "the same kind of freedom [is afforded] to those who would communicate ideas by conduct • • • as these amendments afford to those who communicate ideas by pure speech." (Cox v. State of Louisiana, 379 U. S. 536, 555, 85 S. Ct. 453, 464, 13 L. Ed. 2d 471.) The State may, under its police powers, proscribe many forms of conduct which threaten the peace, security or well-being of its inhabitants, and the Constitution does not require that an exception be made for prohibited activities to which some persons would ascribe symbolic significance. (See People v. Stover, 12 N. Y. 2d 462, 240 N. Y. S. 2d 734, 191 N. E. 2d 272, app. dsmd. 375 U. S. 42, 84 S. Ct. 147, 11 L. Ed. 2d 107, supra; People v. Martin, 15 N. Y. 2d 933, 259 N. Y. S. 2d 152, 207 N. E. 2d 197, cert. den. 382 U. S. 828, 86 S. Ct. 64, 15

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its coverage since it is perfectly evident, from a reading of the subdivision in its entirety, that the provision was meant to apply to public mutilation of the American flag. (Compare L. 1921, ch. 428 with L. 1922, ch. 270.)

L. Ed. 2d 72; People v. Penn, 16 N. Y. 2d 581, 260 N. Y. S. 2d 847, 208 N. E. 2d 789, cert. den. 383 U. S. 969, 86 S. Ct. 1275.) Thus, rejecting arguments by defendants that their protest demonstrations were protected by the First Amendment, the courts have, in recent years, upheld convictions for (1) violation of a zoning ordinance (see People v. Stover, 12 N. Y. 2d 462, 240 N. Y. S. 2d 734, 191 N. E. 2d 272, app. dsmd. 375 U. S. 42, 84 S. Ct. 147, 11 L. Ed. 2d 107, supra); (2) disorderly conduct (see, e.g., People v. Martin, 15 N. Y. 2d 933, 259 N. Y. S. 2d 152, 207 N. E. 2d 197, cert. den. 382 U. S. 828, 86 S. Ct. 64, 15 L. Ed. 2d 72, supra; People v. Penn, 16 N. Y. 2d 581, 260 N. Y. S. 2d 847, 208 N. E. 2d 789, cert. den. 383 U. S. 969, 86 S. Ct. 1275, 16 L. Ed. 2d 309, supra); (3) trespass (see Adderley v. Florida, 385 U. S. 39, 87 S. Ct. 242, 17 L. Ed. 2d 149); (4) failure to retain possession of a draft card (see O'Brien v. United States, 376 F. 2d 538 [1st Cir.]; cf. United States v. Miller, 2 Cir., 367 F. 2d 72, cert. den. 386 U. S. 911, 87 S. Ct. 855, 17 L. Ed. 2d 787); and (5) deliberate disregard of an order closing a river to navigation. (See United States v. Aarons, 2 Cir., 310 F. 2d 341.) As the Supreme Court observed in the *Adderley* case (385 U. S. 39, 48, 87 S. Ct. 242, supra), freedom of expression does not license individuals to speak "whenever and however and wherever they please" (See, also, Walker v. City of Birmingham, 387 U. S. ——, 87 S. Ct. 1824, 18 L. Ed. 2d 1210; Kovacs v. Cooper, 336 U. S. 77, 69 S. Ct. 448, 93 L. Ed. 513.)

It is the teaching of the cases that the constitutional guarantee of free speech covers the substance rather than the form of communication and that the right to employ a particular mode of expression will be vindicated only if it has been outlawed, not because of any legitimate State interest, but solely for the purpose of censoring the under-

lying idea or thought. (See, e.g., Brown v. State of Louisiana, 383 U. S. 131, 86 S. Ct. 719, 15 L. Ed. 2d 637, supra; Cox v. State of Louisiana, 379 U. S. 536, 85 S. Ct. 453, 13 L. Ed. 2d 471, supra; Carlson v. State of California, 310 U. S. 106, 60 S. Ct. 747, 84 L. Ed. 1104, supra; Thornhill v. State of Alabama, 310 U. S. 88, 101-106, 60 S. Ct. 736, 84 L. Ed. 1093; Stromberg v. People of State of California, 283 U. S. 359, 51 S. Ct. 532, 75 L. Ed. 1117, supra; O'Brien v. United States, 1 Cir., 376 F. 2d 538, supra; but cf. United States v. Miller, 2 Cir., 367 F. 2d 72, cert. den. 386 U. S. 911, 87 S. Ct. 855, 17 L. Ed. 2d 787, supra.) On the other hand, if the State can show that the prohibition of certain conduct is designed to promote the public health, safety or well-being, then, "the circumstance that such prohibition has an impact on speech or expression" does not render the legislation violative of the First Amendment (People v. Stover, 12 N. Y. 2d, at p. 469, 240 N. Y. S. 2d at p. 739, 191 N. E. 2d at p. 276) providing, of course, that other channels of communication are open and available. (Compare Kovacs v. Cooper, 336 U. S. 77, 89, 69 S. Ct. 448, 93 L. Ed. 513, supra, with Bakery & Pastry Drivers & Helpers Local 802 etc. v. Wohl, 315 U. S. 769, 775, 62 S. Ct. 816, 86 L. Ed. 1178.)[2]

For many years now, public desecration of the American flag has been a criminal offense in all of the States. (See "Desecration of the Flag", Hearings on H. R. 271 Before Subcommittee No. 4 of House Committee on Judiciary, 90th Cong., 1st Sess. [Serial No. 4], pp. 324-346.) There

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[2] The First Amendment does not invalidate a statute prohibiting certain bizarre conduct even if the need for restrictive legislation was not fully appreciated until after someone had utilized that form of conduct as a means of social or political protest. (See People v. Stover, 12 N. Y. 2d at p. 466, 240 N. Y. S. 2d at p. 736, 191 N. E. 2d at p. 274.)

is, in fact, a Uniform Flag Law (9B Uniform Laws Annotated [1966], pp. 51-54), closely resembling subdivision 16 of section 1425 of our Penal Law, which has been adopted by more than a dozen States. This sort of legislation was enacted, it has been said, as a reaction to the unseemly practice, adopted in the 1896 presidential campaign, of affixing political slogans to the flag. (See 9B Uniform Laws Annotated [1966], p. 48.) In any event, whatever motivated the Legislature to act, the statutory purpose is clear—it is to prevent a breach of the peace. (See People ex rel. McPike v. Van de Carr, 91 App. Div. 20, 26, 86 N. Y. S. 644, affd. 178 N. Y. 425, 70 N. E. 965; Halter v. State of Nebraska, 205 U. S. 34, 41, 27 S. Ct. 419, 51 L. Ed. 696; People v. Von Rosen, 13 Ill. 2d 68, 70-71.) As the Supreme Court noted in the *Halter* case (205 U. S. 34, 41, 27 S. Ct. 419, 421, supra), "insults to a flag have been the cause of war, and indignities put upon it, in the presence of those who revere it, have often been resented and sometimes punished on the spot." Subdivision 16 of section 1425 is designed to prevent the outbreak of such violence by discouraging contemptuous and insulting treatment of the flag in public. Happily, the courts have not been called upon to apply the statute, or others like it, with any degree of frequency. In People v. Picking, 288 N. Y. 644, 42 N. E. 2d 741, we sustained a conviction under subdivision 16 for exploitation of the American flag in commercial advertising (see, also, Halter v. State of Nebraska, 205 U. S. 34, 27 S. Ct. 419, 51 L. Ed. 696, supra) and other jurisdictions have, on occasion, similarly punished such disrespectful conduct as publicly tearing a flag or throwing it to the ground. (See Hinton v. State, 223 Ga. 174, 154 S. E. 2d 246; State v. Schlueter, 127 N. J. L. 496, 23 A. 2d 249.)

We need not at this time concern ourselves with a display of the flag in a manner which does not clearly manifest an intention to desecrate it. (Compare State v. Kent, Hawaii 1st Cir. Ct., No. 36423, decided Dec. 9, 1966, with People v. Radich, 53 Misc. 2d 717, 279 N. Y. S. 2d 680, and United States Flag Foundation v. Radich, 53 Misc. 2d 597, 279 N. Y. S. 2d 233.)[3] In the case before us, the defendant concededly burned the flag in public, not for the purpose of destroying it "in a dignified way" (U. S. Code, tit. 36, §176, subd. [j]) but rather to express his indignation and sense of outrage.[4] It was an act of incitement, literally and figuratively "incendiary" and as fraught with danger to the public peace as if he had stood on the street corner shouting epithets at passing pedestrians. (See Chaplinsky v. State of New Hampshire, 315 U. S. 568, 62 S. Ct. 766, 86 L. Ed. 1031.) The State may legitimately curb such activities in the interest of preventing violence and maintaining public order. (See People v. Penn, 16 N. Y. 2d 581, 260 N. Y. S. 2d 847, 208 N. E. 2d 789, cert. den. 383 U. S. 969, 86 S. Ct. 1275, 16 L. Ed. 2d 369, supra; Chaplinsky v. State of New Hampshire, 315 N. Y. 568, 62 S. Ct. 766, 86 L. Ed. 1031, supra; Milk Wagon Drivers Union v. Meadowmoor Co., 312 U. S. 287, 294, 61 S. Ct. 552, 85 L. Ed. 836; Carlson v. People of State of California, 310 U. S. 106, 113, 60 S. Ct. 747, 84 L. Ed. 1104, supra; Halter v. State of

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[3] The statute, by its terms, does not apply to any use of the flag "expressly permitted" under Federal law or to any representation of the flag, apart from advertising, upon documents, pictures, jewelry, stationery, newspapers or magazines.

[4] On oral argument before our court, the defendant disclaimed any reliance on the fact that the flag in question was obsolete, containing but 48 stars. Indeed, we note that the statute defines an American flag as one "upon which shall be shown * * * the stars, and the stripes, in any number of either thereof".

Nebraska, 205 U. S. 34, 27 S. Ct. 419, 51 L. Ed. 696, supra; cf. Brown v. State of Louisiana, 383 U. S. 131, 139, 86 S. Ct. 719, 15 L. Ed. 2d 637, supra; Garner v. State of Louisiana, 368 U. S. 157, 173-174, 82 S. Ct. 248, 7 L. Ed. 2d 207.)

The violation of the statute may not be condoned simply because the defendant's agitation resulted from the distressing news he had heard on the radio or because no violence actually did occur as a result of the flag burning. These were mitigating circumstances which were properly taken into account by the trial court when it suspended sentence for the conviction. Moreover, since the act in question was specifically prohibited by a statute (Penal Law, §1425, subd. 16) and the defendant could be punished only once for having engaged in such conduct (Penal Law, §1938), the court did not render an inconsistent verdict when it dismissed the more general charge of disorderly conduct.

The judgment of conviction should be affirmed.

Van Voorhis, Burke, Scileppi, Bergan, Keating and Breitel, JJ., concur.

Judgment affirmed.

Statement of No Opinion in Inferior Courts

David T. Goldstick hereby states that no written opinion or memorandum was handed down by the Court below in making the judgment appealed from.

Dated: New York, New York, March 10, 1967.

Testimony in Court of Appeals Record

CRIMINAL COURT OF THE CITY OF NEW YORK

Part K-2A, Brooklyn, N. Y.

Docket Nos. 5994 and 5995

Disorderly Conduct; Malicious Mischief

For Trial

THE PEOPLE OF THE STATE OF NEW YORK
on the complaint of

PTL. JAMES COPELAND

vs.

SIDNEY STREET

Brooklyn, N. Y.
July 26, 1966.

Before:

Hon. LUDWIG GLOWA, Judge, Chiminal Court.

Appearances:

PATRICK BONOMO, Esq.,
Assistant District Attorney,
For the People.

BLUMENTHAL, SOMERS & GOLDSTICK, Esqs.,
10 East 40th Street,
New York, N. Y.
BY DAVID T. GOLDSTICK, Esq.,
For the Defendant Sidney Street.

Frank Mandato
Court Reporter.

Court Officer Salvatore Savarese: Dockets 5994 and 5995, Sidney Street, charged with Disorderly Conduct, subdivision 2, and Malicious Mischief.

Mr. Bonomo: The People move to amend the Malicious Mischief charge to add the words "In violation of Section 1425 subdivision 16d."

Mr. Goldstick: No objection! I have a couple of motions, Your Honor!

Court to Mr. Bonomo: Is that violation of 1425, 16d?

Mr. Bonomo: Yes, Your Honor.

Court: Very well!

Mr. Goldstick: Before we plead to this case I would like to make a motion to dismiss the information upon the ground it does not state facts to constitute a crime on the following grounds: The defendant was engaged in a constitutionally protected activity, to wit, freedom of speech. The allegation simply says that the defendant did wilfully and unlawfully set fire to an American flag and did say: "If they did that to Meredith we don't need an American flag." Under the first amendment of the Constitution of the United States and under the New York State constitution on freedom of speech they provide for protest in many forms, whether it be by burning a flag, demonstration or picketing. This is a form of demonstration and protest.

Court: You say burning the flag is a form of demonstration?

Mr. Goldstick: Yes.

Court: Motion denied.

Mr. Goldstick: Also, there is a Federal statute which provides for burning the flag. I refer Your Honor—

Court, interposing: So does Section 1425 provide for the lawful disposition of a flag!

Mr. Goldstick, continuing: I refer Your Honor to page 6 of my brief, referring to the United States Code that a

flag, when it is in such a condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning.

Now, under the supremacy clause, if there is any conflict with any statute the Federal statute takes precedence; if a State law is in conflict with a Federal law the Federal law takes precedence. The Federal law provides you may burn an American flag; therefore, New York State is without power to make a complaint and convict a man for the burning of an American flag.

Court: Motions denied. The question here would be whether he burned it because it was in such poor condition that it should be burned, or if it was an illegal demonstration.

Mr. Goldstick: Under the supremacy—

Court, interposing: Next motion!

No more argument, please!

Mr. Goldstick: I plead the defendant not guilty and take exception to Your Honor's rulings.

Court: Proceed! You may sit down, counselor! Now, we have two cases! One is Disorderly Conduct and one is Malicious Mischief.

Mr. Goldstick: I see nothing in the information regarding a charge of Disorderly Conduct.

Court: We have two charges before me!

Show the complaints to counsel!

Mr. Bonomo: We have two separate complaints! (Handing papers to Mr. Goldstick)

Mr. Goldstick: I plead not guilty to the Disorderly Conduct charge, too, Your Honor.

Court: Are you ready for trial in each case?

Mr. Goldstick: Yes.

Court: Do you stipulate that the two cases will be tried together and the facts adduced in one will be applied to the

other wherever necessary, and there will be separate findings on the facts and the law and separate judgments may be rendered!

Mr. Goldstick: I so stipulate.

Court: Let us proceed!

Mr. Bonomo: I will call Patrolman James Copeland!

JAMES COPELAND, patrolman, shield No. 18915, attached to the 88th precinct, police department, City of New York, takes the stand!

Court: Raise your right hand! Do you swear the testimony you are about to give shall be the truth, so help you God!

A. I do.

Direct examination by Mr. Bonomo:

Q. On June 6, 1966, about 7:00 p.m. did you have occasion to be present at Lafayette Avenue and St. James Place, County of Kings! A. Yes.

Q. Did you have occasion to see the defendant! A. Yes.

Q. Tell the Court the circumstances. A. When I approached St. James Place and Lafayette Avenue I noticed a crowd standing on the corner. There was a fire burning. I got out of the car and walked over to the fire. I thought some kids had started a fire.

Mr. Goldstick: I move to strike that out.

Court: Strike it out! You may sit down, counselor!

Court to witness: Did you walk over to the fire!

A. Yes, and I noticed there was a flag burning.

Mr. Goldstick: I object to any testimony about a flag burning unless we have evidence of the flag.

Court: What did you see, officer?

A. I saw a crowd standing around the fire. One of the men in the crowd said—

Mr. Goldstick, interposing: I object to that.

Court: Objection sustained! What did you see, officer?

Mr. Bonomo: And what did you hear?

Witness: I looked to the northwest side of the street and I saw this man—the defendant—standing there.

Court: Just a minute, officer! Take it easy! You say you walked over to a fire and saw something.

A. Yes.

Court: What did you see?

A. A flag burning.

Court: What kind of flag?

A. An American flag.

Court: Describe the flag.

A. It was a large flag, folded.

Court: What were the colors?

A. Red and white stripes with a background of white stars.

Court: Did you recognize the flag?

A. Yes.

Court: What was it?

A. It was an American flag.

Mr. Goldstick: I object to that without an introduction of the flag.

Court: Over-ruled.

Mr. Goldstick: Exception.

Mr. Bonomo to witness: Then what happened after you looked at the flag? A. I asked the people in the crowd who burned the flag.

Q. What did you do after talking to people? A. I went over to the other side of the street—the northwest side of Lafayette Avenue. I saw the defendant standing there. He was talking out loud.

Q. What was he saying, and describe the manner in which he was saying it. A. I couldn't understand what words he was using until I approached him. He was motioning with his hands. I heard him say: "We don't need no damn flag." I walked over to the defendant and I asked him if he burned the flag. He said: "Yes; that is my flag; I burned it." He said: "If they let that happen to Meredith we don't need an American flag." I put out the fire and took the portion of the flag which was left and took the defendant into the station house; I placed him under arrest and took him to the station house.

Q. How many people were present at the time you arrived? A. About thirty people.

Mr. Goldstick: I object to the leading!

Court: Over-ruled. Sit down, counselor!

Mr. Bonomo to witness: Were there other people present when you arrived other than the defendant? A. Yes.

Q. How many? A. About thirty people.

Q. While you were there was there any change in the number of people? A. It began to increase.

Q. At the time you made the arrest of the defendant will you estimate how many people were present? A. 35 to 40 people.

Q. Will you be able to describe to this Court the manner in which the defendant was talking?

Mr. Goldstick: I object to that.

Court: Objection sustained. He already testified to that. He said he didn't understand him when he first approached the defendant.

Mr. Bonomo to witness: How close were you to the defendant when you began to understand what he said? A. 10 or 15 feet.

Mr. Bonomo: That's all!

Mr. Goldstick: Before I cross-examine I move to dismiss both charges upon the ground the People failed to make out a prima facie case.

Court: Are you going to cross-examine?

Mr. Goldstick: Yes, but I am making a motion before cross-examination!

Court: You better cross-examine!

Cross examination by Mr. Goldstick:

Q. Officer, before you arrived at the scene were you on foot or in a patrol car? A. A patrol car.

Q. Anybody with you? A. Yes; I had a partner.

Q. Is he here in court today? A. No.

Q. Was he there during the whole occasion? A. Yes.

Q. If he were here today he would substantiate what you are saying. A. Yes.

Q. But he is not here today. A. No.

Q. Where did you park your vehicle prior to approaching the defendant? A. I parked my vehicle exactly in front of the flag, on the northeast side of Lafayette and St. James.

Q. When you say exactly in front of the flag is that where the defendant was standing? A. No; the defendant was standing on the northwest corner of St. James and Lafayette.

Q. On the northwest corner is where he was standing. A. Yes.

Q. And where was the flag? A. On the northeast corner of St. James and Lafayette.

Q. The flag was on one side of the street and the defendant was on the other side of the street. A. Yes.

Q. When you arrived and you parked your car by the flag were there any people around the flag? A. Yes.

Q. How many people were around the flag? A. 25 to 30 were around the flag.

Q. Are those the same 25 or 30 people you referred to in your direct examination? A. Yes.

Q. And where the defendant was, across the street, there weren't any people. A. Yes; there were people standing on all four corners.

Q. Now you say there were persons on all four corners; you say there were persons on all four corners. A. Yes, as we approached.

Q. How many people on the northeast corner? A. About 30 persons on the northeast corner where the flag was.

Q. How many people on the northwest corner? A. 5 or 10.

Q. That is where the defendant was. A. Yes.

Q. When you got out of your car what did you do, if anything, with regard to the flag you testified was burning? A. I began to stamp it out with my foot.

Q. What did you do with the flag? A. I left the flag there. I went over to the defendant and asked him if he burned it.

Q. You went over to the defendant. A. Yes.

Q. He was across the street. A. He was on the northwest corner.

Q. Did you pick the flag up and take it with you? A. Portions of it was still burning. My partner was trying to put it out. We didn't pick the flag up until I brought the

defendant back to the car. I picked up portions of the flag and took the defendant to the station house.

Q. What time of the day was this? A. About 7:00 p.m.

Q. Is there a subway entrance there? A. On the south-east corner there is.

Q. Was that near the rush-hour at the time? A. No; the rush-hour is about 5:00 or 6:00.

Q. And what time was this? A. About 7:00.

Q. Is there a college there? A. No; there is a housing development and a church.

Q. While you were standing on the corner where you say there were 20 or 30 people gathered was there any traffic moving in the street? A. Yes; east on Lafayette Avenue.

Q. Had the crowd over-flowed into the street to obstruct traffic? A. No.

Q. On the sidewalk were people passing by the crowd? A. Persons passing by stopped to see what happened.

Q. And did they continue to move on? A. Not all.

Q. But some did. A. Possibly.

Q. The crowd was not of such a large proportion as to obstruct the entire sidewalk. A. It is a very large sidewalk there.

Q. And people were able to get by. A. Yes.

Q. Was the crowd unruly? A. No.

Q. Were there threats or shouts?

Court: He has not testified to anything like that!

Mr. Goldstick to Court: The defendant is being charged with Disorderly Conduct.

Court: Proceed, counselor!

Mr. Goldstick to witness: When you picked up the flag you testified it was folded. A. It was folded.

Q. In your experience as a police officer have you learned the proper manner of folding an American flag? A. Yes.

Q. How? A. With stars and stripes facing up.

Q. When you found the flag was it folded in that manner? A. I could not tell you because it was burned quite badly.

Q. Was the flag on a newspaper or anything? A. No.

Mr. Goldstick: No further questions.

Mr. Bonomo: People's case, in each case!

Mr. Goldstick: I renew my motions to dismiss upon the ground the People failed to prove a prima facie case.

Court: Motion denied as to each case.

Mr. Goldstick: Exception. The defendant will take the stand!

SIDNEY STREET, defendant in this action, residing at 309 Lafayette Avenue, Brooklyn, N. Y., takes the stand!

Court: Raise your right hand! Do you swear the testimony you are about to give shall be the truth, so help you God?

A. I do.

Court: What is your occupation?

A. Bus driver.

Direct examination by Mr. Goldstick:

Q. By whom are you employed? A. New York City Transit Authority.

Q. For how long? A. 20 years.

Q. Are you married? A. Yes.

Q. Is this your first appearance in a court? A. Yes.

Q. Yon were never in any court for any reason whatsoever. A. No.

Q. Before being a bus driver for 20 years were you in the armed forces? A. Yes.

Q. How long? A. Five years.

Q. In what branch of the service? A. Quartermaster Army Corp.

Q. What rank did you achieve?

Mr. Bonomo: I object to that.

Court: Yes, that is far enough!

Q. Did you receive any decorations?

Mr. Bonomo: I object to that!

Court: Did you get honorably discharged?

A. Yes.

Q. Any decorations?

Mr. Bonomo: I object to that!

Court to witness: What decorations did you get?

A. The Bronze Star.

Mr. Goldstick to witness: On the afternoon of June 6th where were you at that time? A. On Lafayette Avenue.

Q. Where is that? A. In Brooklyn.

Q. Where? A. In my apartment.

Q. Tell the Court what happened that afternoon while you were in your apartment. A. I was sitting on the chair. I heard a news flash.

Q. What did you hear? A. That James Meredith had been shot.

Q. What did you do when you heard that? A. I said: "They didn't protect him."

Q. What did you do then? A. I went to the dresser drawer and took the flag.

Q. What flag? A. The American flag.

Q. Tell us about the flag! When did you get that flag? A. It was given to my wife's mother at her step-father's funeral.

Q. Had the flag draped his coffin? A. Yes.

Q. How old is the flag? A. About 20 years old.

Q. Describe its condition! A. It was faded.

Q. Before June 6th did you have occasion to use that flag? A. Yes.

Q. On what occasion did you use the flag? A. Displayed it on national holidays.

Q. Did you own another flag? A. Yes.

Q. What kind of flag was that? A. An American flag.

Q. How many stars in the other flag? A. The first one had 48.

Q. And the second one? A. 50.

Q. When you went to the dresser for the 48 star flag what did you do with it after hearing the broadcast? A. I carried it downstairs.

Q. Then what did you do? A. I left it neatly folded.

Q. Where did you go with the flag? A. I went down St. James and Lafayette Avenue.

Q. What did you do?

Q. I laid a piece of newspaper on the ground; I held the flag in my left hand and struck a match and made a flame and I stood there and I held it as long as I could. When it began to burn my hand I dropped the flag.

Q. Then what happened? A. Then the patrol car came by.

Q. A patrol car? A. A police car.

Q. What happened? A. The policeman got out. He thought the kids had started a fire on the street.

Mr. Bonomo: I object to that.

Court: Objection sustained.

Q. Did the officer speak to you or did you speak to him? A. He spoke to me.

Q. What did he say? A. He asked me if I set fire to the flag. I said yes.

Q. Then what happened? A. I said: "If they do what they had to Meredith we don't need this flag."

Q. While you were burning this flag did anybody say anything to you other than this police officer? A. Nobody.

Q. Did anybody stop? A. I noticed no unusual crowd.

Q. Where is that corner? A. St. James and Lafayette.

Q. Were you on the curb or in the street? A. I was on the curb. The flag was laying on the curb.

Q. When the police officer came up to you were you still by the flag? A. Yes.

Q. The flag was still burning when the officer came? A. Yes.

Q. Other than saying to the police officer "if they did that to Meredith we don't need an American flag," did you speak to anybody else at the time? A. No.

Mr. Goldstick: No further questions!

Cross examination by Mr. Bonomo:

Q. How long was that flag in the drawer before this day? A. Since Memorial Day.

Q. It was at least a year. A. Yes.

Q. During that time did you buy a new flag? A. Yes.

Q. You had a new flag which you displayed on holidays? A. I displayed the new one on Memorial Day.

Q. Have you displayed this particular flag during that time? The flag that you burned, did you display it after buying the new flag? A. No.

Q. You left it in the drawer. A. Yes.

Q. On the day in question it wasn't until you heard about James Meredith being shot that you decided to burn the flag. A. No.

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Q. When did you decide to burn the flag? A. After I had purchased the new one I had the idea of burning that flag.

Q. But you didn't burn it. A. No.

Q. But you did burn it on the day James Meredith was shot. A. Yes.

Q. You burned it after you heard he was shot. A. Yes.

Q. Almost immediately after you heard he was shot. A. Not immediately.

Q. You went to the drawer and took out the flag and went outside and burned it, is that right? A. Yes.

Q. Then you burned it because of what you heard about Meredith and not because it was faded. A. I had planned to burn the flag anyway long before I heard about Meredith.

Mr. Bonomo: That's all!

Mr. Goldstick: The defendant rests.

Mr. Bonomo: The People rest.

Mr. Goldstick: I move to dismiss on all the constitutional grounds previously made, on all the grounds provided for in the Code of Criminal Procedure, and also upon the ground the People failed to prove a case beyond a reasonable doubt.

Court: On the charge of Disorderly Conduct the defendant is acquitted; on the charge of Malicious Mischief the defendant is convicted.

Mr. Goldstick: May we have next Tuesday for sentence?

Court: No, that is not enough time! August 9th for sentence; bail continued.

Minutes certified true and accurate.

Frank Mandata
Court Reporter.